

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Robyn West,		NOTICE OF DETERMINATION OF
	Complainant,	PRIMA FACIE VIOLATION
vs.		AND
Mike Bourke,		NOTICE OF AND ORDER FOR
	Respondent.	PROBABLE CAUSE HEARING

TO: Robyn West and Mike Bourke

On November 1, 2010, Robyn West filed a Complaint with the Office of Administrative Hearings alleging that Mike Bourke violated Minn. Stat. § 211B.06. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.06.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **9:30 p.m. on November 5, 2010**. The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. Follow the directions and enter the numeric pass code **"2494407275"** when asked for the meeting number.¹ The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Beverly Jones Heydinger at 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based upon a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that

¹ In the event that you have trouble connecting to the call, please contact Nancy Hansen at 651-361-7874 or Denise Collins at 651-361-7875.

the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the presiding Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, Saint Paul, MN, 55101, or call 651-361-7900 (voice) or 651- 361-7878 (TTY).

Dated: November 3, 2010

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Complainant Robyn West is an Anoka County Commissioner

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of whether it is false. Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”²

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.³ It does not prohibit inferences or implications, even if misleading. However, the statement that must be proved false is

² Minn. Stat. § 211B.01, subd. 2.

³ *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); *See, Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said.⁴

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁵ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁶ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁷

The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06. According to Anderson, Otto has stated that Anderson completed only ten investigations while she was state auditor, and that Otto has completed three times that number of investigations. Anderson alleges that these statements have been incorporated into Respondents' campaign material and are capable of being proven true or false. They also refer to the character or acts of a candidate for election to office, and as such, come within the purview of Minn. Stat. § 211B.06. The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06. The allegation will proceed to a probable cause hearing as ordered.

B. J. H.

⁴ *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

⁵ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁶ *Id.*

⁷ *Id.*